MOTION PICTURE ASSOCIATION OF AMERICA, INC.

November 18, 2004

Deborah Platt Majoras, Commissioner
Orson Swindle, Commissioner
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Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: P2P File-Sharing Workshop - - Comment P034517

Dear Commissioners:

The Motion Picture Association of America (MPAA), which represents the interest of the major motion picture companies in the global marketplace, would like to thank the Federal Trade Commission (FTC) for its continuing efforts to assess the impact on consumers and businesses of peer-to-peer file-sharing technologies (P2P). We submit below written comments that we hope will foster greater understanding of the motion picture industry's view on this subject, and that ideally will be the topic of more detailed discussion at the December 15th and 16th workshops. In sum, we advance the following five points in this submission: (1) the movie studios are pro-technology and have readily employed technological advancements to improve the artistry of movie-making; (2) the MPAA and its members are not against P2P technology; (3) the core concern of the industry is with the conduct and business plan of those who misuse P2P to encourage and profit from illegal conduct; (4) there are readily-available solutions that permit the continued wide deployment of P2P systems while preserving respect for creativity and copyright; and (5) the FTC has an important role to play in encouraging good cyber-citizenship and in protecting consumers from the predatory, pornographic, and pirate conduct that is on-going on many public P2P services.

The member studios of the MPAA employ technological innovation to the great benefit of consumers in the United States and around the world. Hollywood's technical wizardry repeatedly astounds audiences as it achieves effects previously considered impossible. A recent example of this continuing phenomenon is the movie "Polar

Express." This movie, whose entire cast features characters composed of actor's movements filtered through a computer, is being hailed for technological advances that could revolutionize storytelling. Clearly, the motion picture industry hardly consists of individuals or companies that wring their hands at technology or mourn innovation. Instead, the motion picture studios have continually used innovation to advance the art of illusion and cinematic storytelling.

The examples of the MPAA and its member companies' commitment to the promise of a digital future are manifold. Of particular note in this regard is the industry's willingness to work collectively with technology innovators from other industries to ensure the delivery of secure, high quality digital motion picture content to American families. Indeed, the success of the DVD illustrates the potential to digitally deliver entertainment in a way that not only benefits American consumers, but also effectively protects content. The DVD has quickly become the fastest growing consumer electronics platform in history, with DVDs replacing VCRs as the platform of choice in 40 percent of all U.S. households. There are some 23,000 DVD titles available, with approximately 125 new titles released every week. The success of the DVD would not have occurred without the motion picture studios working collaboratively with the consumer electronic and software industries to develop a protection system that has enabled consumers access to high quality DVD movies for home viewing on their video systems and computers.

As with the DVD, the motion picture industry welcomes the opportunity to work with responsible businesses to explore new mechanisms for the digital delivery of content, including distributed computing. It is worth noting that the concept of grid technology generally, and P2P specifically, is neither nascent nor objectionable. Grid technology, originally developed to deliver supercomputing power to large scientific projects, is now decades old. The original idea behind the concept was to take advantage of idle computer network capacity by supporting the direct exchange of resources and data between computers without relying on a common file server or a central server. Once P2P computing software is installed on a desktop, every computer becomes a "peer" that can act both as a client and a server. This grid of connected computers – that now also includes servers – has the potential to optimize the use of network resources and to make a network more resilient to failures. The distribution of workload across many desktop computers can greatly reduce storage and processing demands on traditional central servers because (1) instead of automatically linking to central servers for a network transaction (such as a requested movie clip) a P2P application searches for the nearest peer/desktop computer that can produce the request materials, and (2) previously unused storage and processing capacity are brought into usage to support the larger network. The potential of distributed computing is particularly powerful for companies that seek to regularly support the exchange of large files. Even the largest servers can become overwhelmed when numerous employees or customers simultaneously download large files. P2P helps to solve this problem by making use of the existing storage space and processing capacity on all users' computers, and by using each computer as a distribution point in the supply chain.

The motion picture studios are already taking advantage of the powerful potential of distributed computing. As exemplified by the DVD, the test of the industry's commitment is not in the talk, but in the execution. For the motion picture industry the concept of using distributed computing as a solution to the problems posed by delivering large files to numerous people simultaneously is real. All of the major motion pictures studios are working with http://www.ifilm.com/movies to distribute content using a distributed computing platform. The use of distributed computing technology has permitted ifilm.com to overcome the limitations in the average speed of broadband connections and typical network congestion on video feeds, and has permitted the delivery of high quality video streams to large numbers of visitors to the ifilm.com service.

Unlike many of the most popular P2P services, the distributed computing company behind ifilm.com is committed to building business rules within its system that protects copyrighted content. Red/Swoosh, and other business enterprise P2P systems like Kontiki, seeks to support the efficient exchange of files while protecting content rights. Companies like Red/Swoosh, Kontiki, and Avaki Corp. are using grid technology to federate computers and share resources, subject to security rules. These companies recognize that there are no technical barriers to implementing security processes that protect content within a distributed environment. P2P is not inherently incompatible with security features such as authentication, digital certificates, content identification, or digital rights management. In fact, many enterprise P2P application developers have already integrated advanced security features into their product. The principle that content can be protected in a P2P environment is so widely accepted that Intel is working to promote an open source security component that software developers can add to their P2P application.

Thus, the challenge with P2P is not the technology, but the business model of those who have chosen to use the concepts of distributed computing for their own illicit purposes. These companies have fielded P2P file-sharing systems without any content protection systems knowing full well that the opportunity to obtain free movies, music, software, and other media is the draw for the system's users. Additionally, these companies have profited enormously from this use while carefully avoiding every opportunity to stop or even merely impede this direct infringement. In short, these companies and their advocates use a range of tactics to deflect criticism, deny their abilities, and shirk their responsibilities.

We are hopeful that the FTC's workshop will force all the participants to move beyond polemics and towards a principled and productive discussion of how P2P can advance while still protecting the rights of artists, writers, software developers and other creators. The public P2P companies have become experts in using the novelty of P2P file sharing to deflect criticism by encouraging confusion between their corporate greed and the concept of P2P. By cloaking themselves within the garb of technology, they are able to deflect all criticism and portray those who criticize them as being against the growth of nascent technologies.

While this strategy had proven largely effective, hearings in the House and Senate over the last two years have begun to expose the substantial risks to consumers and the significant problems attributable to the leading public P2P networks. The documented plagues posed by these networks are legion, including:

- *Threatening user's privacy and security*. Studies show that thousands of people have inadvertently shared personal data over file sharing networks, and usually have no idea that they are doing so. Research conducted by the Committee on Government Affairs of the House of Representatives revealed that thousands of people are sharing data files containing detailed records of their personal finances.

- *Exposing users to computer viruses and Trojan horse programs*. Research by security company TruSecure has reveled that approximately 60 percent of the nearly 5000 executable files downloaded with popular file sharing programs contained computer viruses or Trojan horse programs.

- *Delivering pornography to the unsuspecting, regardless of age.* This exposure does not have to be intentional. The Government Accounting Office (GAO) reported to Congress that "searches on innocuous keywords likely to be used by juveniles" retrieved images including adult pornography (34 percent), cartoon pornography (14 percent), child pornography (1 percent), and child erotica (7 percent). A recent search for "Passion of the Christ" returned similar pornographic content.

- *Transferring liability to users*. These systems often automatically make each user a re-distributor of content and subject to civil and criminal penalties. Users of these networks are often lulled into thinking their conduct is legal by false claims on these services or because they pay to gain access.

The dedication of these public P2P services to the ancient art of thievery, rather than the modern art of technological advancement, is laid bare by their efforts to protect their user-base while ignoring the equally protectable copyrighted content traversing their networks. To reduce the potential that their users will be scared away by pornography or viruses, these networks have changed their programs to incorporate pornography filters and sophisticated components that block files containing viruses. However, with regard to the lure that is the life-blood of their profit-making venture – copyrighted content – the technological hurdles are suddenly "too high" for them to lift a finger. One touchstone guides their decision to block viruses but not block unauthorized content: Money.

These companies have shown that no technological mountain is too high to climb when it profits them. They implement advanced virus filtering on their allegedly uncontrollable decentralized systems. They implement features to assist users in avoiding pornography. They implement measures to assist users in avoiding mislabeled files. While these measures are not perfect, they go far towards their goals. However,

when it comes to infringing activity, the lack of what they view as a perfect solution prohibits them from taking any action at all. The illogic and incongruity of those who claim to be technologists asserting that their hands are tied by technological limitations is lost on these bad actors. It is high time that the protective cloak of distributed computed be pulled away from these companies exposing them as the leeching opportunists they are. Technological development and P2P will continue unabated if these companies are not held accountable for their bad acts.

The conduct of the most notorious public P2P systems has stunted the growth of P2P as a distribution system for legitimate copyrighted content. As evidenced by the DVD, the success of this potential delivery mechanism can be accelerated if technologists work together to ensure that creative rights are protected. We are hopeful that the FTC will continue its leadership role in this area and will encourage the public P2P systems to: (1) act more responsibly in protecting consumers against the predatory practices that are prevalent on these systems, and (2) use readily available filtering technologies to prevent copyrighted content from being traded on these systems.

We look forward to the workshop discussions scheduled for December 15th and 16th. We are genuinely interested in the potential of distributed computing. The motion picture industry has supported and will continue to support various digital distribution models. At present, millions of digital cable subscribers now have instant access to the latest blockbuster films via digital video-on-demand (VOD) services. We have also seen the emergence of legitimate online movie services. For example, companies such as MovieLink, CinemaNow, Movieflix, and CFlix offer consumers the ability to access films directly over the Internet. These services offer the functionality of traditional analog offerings – the ability to pause, rewind, fast-forward and replay – with the added convenience of fast in-home access and a library of movies that are always "in stock." Internet delivery will allow you to rent a movie and download it to your PC, your personal digital network for viewing in your living room, or your laptop to watch on your flight from Washington to California or on a drive with your children from Washington to New York. Other such services will surely follow and, as we have seen in the case of online travel and ticketing services, offer more choices for consumers. With the help of the FTC, it is quite possible that P2P technology could become the DVD of the future: offering great content to consumers with protections that preserve the rights of innovators.

Please do not hesitate to call us if we can be of any assistance. I can be reached at 818-995-6600, ext. 326, or through email at dean_garfield@mpaa.org.

Respectfully Submitted,

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